



# भारत का राजपत्र

## The Gazette of India

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

साप्ताहिक

WEEKLY

सं. 10]

नई दिल्ली, अप्रैल 30— मई 6, 2017, शनिवार/वैशाख 10 — वैशाख 16, 1939

No. 10

NEW DELHI, APRIL 30—MAY 6, 2017, SATURDAY/ VAISAKHA 10—VAISAKHA 16, 1939

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए साधारण आदेश और अधिसूचनाएं

Orders and Notifications issued by the Central Authorities (Other than the Administrations of Union Territories)

### भारत निर्वाचन आयोग

नई दिल्ली, 21 अप्रैल, 2017

आ.आ.13.— लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग 2014 की निर्वाचन अर्जी संख्या 9 में इलाहाबाद उच्च न्यायालय के तारीख 7 दिसम्बर, 2016 के निर्णय को एतद्वारा प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82 / उ.प्र.—लो.स. / 9 / 2014(इला.)]

आदेश से,

अनुज जयपुरियार, सचिव

### ELECTION COMMISSION OF INDIA

New Delhi, the 21st April, 2017

O.N. 13.— In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgement dated 7th December, 2016 of the High Court of Judicature at Allahabad in Election Petition No. 9 of 2014.

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

**ELECTION PETITION No. 9 OF 2014**

(Under Section 80, 84, 98 & 99 of Representation of the People Act 1951)

**DISTRICT : VARANASI**

1. Ajay Rai son of Late Surendra

Resident of House No. 21/94,

Pishach Mohan, Varanasi.

2. Madhav Prasad Upadhyay

Son of Sri Durga Prasad Upadhyay

Resident of K53/20, Mohalla Madhyameshwar

Varanasi-1755

..... ELECTION PETITIONER

VERSUS

Shri Narendra Modi

Son of Late Damodardas Modi

Resident of C-1, Someshwar Tenament,

Ranip, Ahmedabad – 382 480, Gujarat

Presently at 7 Race Course Road, New Delhi

..... RETURNED CANDIDATE/ RESPONDENT

**Court No. - 37**

**Case :- ELECTION PETITION No. - 9 of 2014**

**Petitioner :- Ajay Rai And Another**

**Respondent :- Shri Narendra Modi**

**Counsel for Petitioner :-** In Persons, Jitendra Kumar, K.C.Mittal, U.N.Sharma

**Counsel for Respondent :-** Dheeraj Jain, K.R.Singh, S.C. Mishra, Satya Pal Jain

**Hon'ble Vikram Nath,J.**

The two petitioners namely Ajay Rai and Madhav Prasad Upadhyay have filed this petition under sections 80, 84, 98 & 99 of the Representation of the People Act, 1951 (hereinafter referred to as the Act) challenging the election of the sole respondent Sri Narendra Modi (the returned candidate) as a Member of the Parliament from 77 Varanasi Parliamentary Constituency (hereinafter

referred to as the constituency) in the 15<sup>th</sup> General Elections of the Parliament. The General Elections for constituting new House of Public (Parliament) was notified by the President of India vide Notification dated 05.03.2014. As per the notification with respect to the constituency following election schedule was declared by the Election Commission of India :

(1) Date of Notification of the Election	05.03.2014
(2) Last Date of filing of Nomination Paper	24.04.2014
(3) Date of scrutiny of Nomination Paper	25.04.2014
(4) Date of withdrawal of Nomination Paper	28.04.2014
(5) Date of polling	12.05.2014
(6) Date of counting of votes	16.05.2014
(7) Date of declaration of result	16.05.2014

Petitioner No.1, Ajay Rai filed his nomination paper as a candidate of the Indian National Congress and was allotted the symbol of *Hanth Ka Panja* (open palm). Petitioner No.2 is an electorate of the same constituency. The respondent, Sri Narendra Modi (returned candidate) submitted his nomination paper on 24.04.2014 as a candidate of the Bhartiya Janta Party and was allotted the symbol of *Kamal Ka Phool* (Lotus flower).

The Returning Officer after completing the process for scrutinizing the nomination papers declared as many as 42 candidates in fray. A list in terms of section 38 of the Act was published by the Returning Officer. The polling of the election in the constituency took place on 12.05.2014 and the counting of the same was scheduled for 16.05.2014. The results were announced on the same day itself, i.e. 16.05.2014 and the sole respondent was declared as the returned candidate from the constituency.

The present petition challenging the election of the respondent as a returned candidate was presented before this court on 30.06.2014. Notices were issued to the sole respondent vide order dated 18.07.2014. The respondent filed written statement on 20.12.2014. Before filing the written statement the respondent filed two applications dated 29.10.2014 - one under section 86 (1) of the Act (Paper No.A-11) praying to dismiss the election petition for noncompliance of the provisions contained in section 81 (3) of the Act and the other application under Order VI Rule 16 and Order VII Rule 11 of the Code of Civil Procedure (CPC) (Paper No.A-10) praying for striking off paragraphs 7 to 34 of the election petition under Order VI Rule 16 of the CPC and further for dismissing the election petition under Order VII Rule 11 of the CPC as it did not disclose any cause of action. Both these applications are supported by affidavits (Paper Nos.A-16 & 17) of the respondent. The petitioners filed counter affidavits to both the applications to which the respondent filed rejoinder affidavits (Paper Nos.A-18 & 19).

Sri S.P. Jain, learned Senior Advocate assisted by Sri K.R. Singh, learned counsel appearing for the respondent and Sri U.N. Sharma, learned Senior Advocate assisted by Sri Jitendra Kumar, learned counsel appearing for the petitioners have been heard on the aforementioned two applications and the material placed before me on record has been perused.

Before advertizing to the applications, certain facts need to be recorded. The election petition as originally framed and filed raised as many as 10 grounds (grounds A to J) contained in paragraph 6 of the petition. Some of these grounds are interlinked. Factual averments in support of the grounds have been stated in paragraphs 7 to 34 of the petition.

Grounds A and B relate to improper acceptance of the nomination paper of the respondent. Ground C relates to corrupt practice as defined in section 123 (1) (A) of the Act. Ground D relates to corrupt practice as defined in section 123 (2) of the Act. Ground E relates to corrupt practice as defined in section 123 (3) of the Act. Ground F relates to corrupt practice as defined in section 123 (3A) of the Act. Grounds G, H and I relate to corrupt practice as defined in section 123 (6) of the Act and Ground J relates to non-compliance of the provisions of the Constitution, the Act and Rules framed thereunder.

During course of arguments Sri U.N. Sharma, learned Senior Counsel appearing for the petitioners, on 22.11.2016 made a statement before the Court that he was pressing only grounds A, B, G, H & I. Rest of the grounds namely C, D, E, F & J were not being pressed by the petitioners. As a consequence paragraph nos.11 to 27 and 34 of the petition narrating facts in support of the grounds C, D, E, F and J have been not pressed and no longer remain alive for consideration by this Court. Thus this Court while considering the applications of the respondent has to deal with the grounds A, B, G, H & I only and paragraph nos.7 to 10 and 28 to 33 of the petition.

The application under section 86 (1) of the Act was filed with the allegations that the election petition was supplied to the respondent without documents which are integral part of the election petition as such was not true copy of the election petition resulting in non-compliance of the provisions contained in section 81 (3) of the Act. On this application Sri Jain, learned Senior Counsel for the respondent has not advanced any arguments as such it is apparent that it is being not pressed.

Insofar as the second application under Order VI Rule 16 and Order VII Rule 11 CPC read with section 86 (1) of CPC is concerned it was filed on the following allegations :

- (a) The election petition is completely bereft of material facts and does not disclose any cause of action.
- (b) The election petition contains absolutely indefinite, vague, general and misconceived allegations.
- (c) The pleadings in the election petition are also frivolous, vexatious, unnecessary, irrelevant and tend to prejudice, embarrass and delay the fair trial of election petition.
- (d) The election petition purports to contain alleged grounds of corrupt practices alleged to have been committed by the respondent but material facts relating to consent of the respondent are not stated.

*The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. None of these propositions however has any application if the special law itself confers authority on a Tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequences of non-compliance with certain procedural requirements laid down by it.*

*It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt*

*practices. In cases where the election law does not prescribe the consequence or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the tribunal entrusted with the trial of the case is not affected.*

*It is in these circumstances necessary to set out the different provisions of the Act relevant to the matter canvassed before us.*

The above paragraph is an extract from the Constitution Bench of the Apex Court in the case of *Jagan Nath vs. Jaswant Singh and others*, reported in 1952 AIR 210. The same has been the backbone for the Tribunals/Court dealing with election petitions.

### **Legal provisions and relevant case laws**

Section 87 of the Act lays down the procedure before the High Court. Sub-section (1) lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the CPC to the trial of suits.

Under the CPC, Order VI Rule 16 and its sub-rules deal with the pleadings generally. Rules 2, 4, 6 and 16 of Order VI CPC, relevant for the present context, are quoted herein under :

**2. Pleading to state material facts and not evidence.-** (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

**4. Particulars to be given where necessary.-** In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

**6. Condition precedent.-** Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

**16. Striking out pleadings.-** The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading -

- (a) which may be unnecessary, scandalous, frivolous or vexatious, or
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- (c) which is otherwise an abuse of the process of the Court.

The Act lays down similar provisions regarding facts to be pleaded in section 83 thereof which reads as under :

**83. Contents of petition. -** (1) An election petition-

- (a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full **particulars** of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) Shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings':

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the **particulars** thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

The requirement under the Act as also under the CPC is that the petition must contain **concise** material facts on which reliance is being placed, in case of allegations of corrupt practice full particulars shall be set forth which may include a full statement as possible of the names of the parties alleged to have committed such corrupt practice, the date and place of the commission of each such practice.

Order VII Rule 11 of the CPC provides that a plaint shall be rejected under the given cases-first being where it does not disclose a cause of action. Cause of action is not defined anywhere but has been interpreted in a number of decisions to mean a bundle of facts which if proved would entitle the party to the relief claimed.

In *A.B.C. Laminart Pvt. Ltd. & Anr. vs. A.P. Agencies, Salem*, reported in (1989) 2 SCC 163, the Apex Court explained the meaning of “cause of action” as follows :

*A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.*

It would also be useful to refer to the judgment in *Bloom Dekor Ltd. vs. Subhash Himatlal Desai & Ors.*, reported in (1994) 6 SCC 132, wherein a three Judge Bench of this Court held as under :

*By “cause of action” it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court, (Cooke v. Gill, 1873 LR 8 CP 107) . In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit.*

A bare reading of the aforesaid provision and the settled law indicates that an election petition shall contain a **concise** statement of the material facts on which the petitioner relies. The word “**concise**” has been defined in the Oxford Dictionary as giving a lot of information clearly and in a few words; brief but comprehensive.

The words “**material facts**” used in the above section, have been subject matter of scrutiny in large number of decisions of various High Courts and the Apex Court. Here also as the objection raised by the respondent is that material facts have not been pleaded by the petitioners with regard to Ground Nos. A & B and G, H & I, the same need to be dealt with as per the meaning of the said words as interpreted by the Apex Court and different High Courts.

The expression “**material fact**” has not been defined either in the Act or in the CPC. Dictionary meaning of the word “Material” under different dictionaries may be elaborated as ‘material’ means ‘fundamental’, ‘vital’, ‘basic’ ‘cardinal’, ‘central’ ‘crucial’, ‘decisive’, ‘essential’, ‘pivotal’, ‘indispensable’, ‘elementary’ or ‘primary’. The phrase ‘**material facts**’, therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, ‘material facts’ are facts upon which the plaintiff’s cause of action or the defendant’s defence depends. What particulars could be said to be ‘**material facts**’ would depend upon the facts of each case and no rule of universal application can be laid down. It would, however, be absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party. On behalf of the respondent reliance was placed upon a judgment in the case of *Azhar Hussain vs. Rajiv Gandhi*, reported in *AIR 1986 Supreme Court 1253*. Sri Jain, learned Senior Counsel submitted that in the said judgment the Supreme Court has laid down with minute details that material facts must necessarily be stated and failure of mentioning a single material fact would defeat the disclosure of cause of action. In paragraph 11 of the aforesaid report the ratio laid down is as follows :

*In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in *Samant N. Balkrishna & Anr. v. George Fernandez & Ors.*, [1969] 3 S.C.C. 239, has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in *Udhav Singh v. Madhav Rao Scindia*, [1977] 1 S.C.C. 511, the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of, Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.*

Further in paragraph 12 of the same judgment the Supreme Court repelled the contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence as a thoroughly misconceived and untenable argument and thereafter it continued to give reasons as to why an election petition cannot be compared with an ordinary civil litigation and why it is important that all material facts should be pleaded and failure to do so would prove fatal in an election petition. Relevant extract from paragraph 12 is reproduced below :

12. Learned counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be

exercised at the threshold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocle need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The Courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the Court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent Court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfil other commitments. Such being the position in regard to matters pertaining to ordinary Civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections. So long as the sword of Damocles of the election petition remains hanging an elected member of the Legislature would not feel sufficiently free to devote his whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the concerned constituency. The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition. Instead of being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office, and instead of resolving their problems, he would be engaged in a campaign to establish that he has in fact been duly elected. Instead of discharging his functions as the elected representative of the people, he will be engaged in a struggle to establish that he is indeed such a representative, notwithstanding the fact that he has in fact won the verdict and the confidence of the electorate at the polls. He will have not only to wind the vote of the people but also to win the vote of the Court in a long drawn out litigation before he can whole-heartedly engaged himself in discharging the trust reposed in him by the electorate. The pendency of the election petition would also act as a hindrance if he be entrusted with some public office in his elected capacity. He may even have occasions to deal with the representatives of foreign powers who may wonder whether he will eventually succeed and hesitate to deal with him. The fact that an election petition calling into question his election is pending may, in a given case, act as a psychological fetter and may not permit him to act with full freedom. Even if he is made of stern metal, the constraint introduced by the pendency of an election petition may have some impact on his sub-conscious mind without his ever being or becoming aware of it. Under the circumstances, there is greater reason why in a democratic set-up, in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the Nation, the controversy is set at rest at the

earliest if the facts of the case and the law so warrant. Since the Court has the power to act at the threshold the power must be exercised at the threshold itself in case the Court is satisfied that it is a fit case for the exercise of such power and that exercise of such powers is warranted under the relevant provisions of law. To wind up the dialogue, to contend that the powers to dismiss or reject an election petition or pass appropriate orders should not be exercised except at the stage of final judgment after recording the evidence even if the facts of the case warrant exercise of such powers, at the threshold, is to contend that the legislature conferred these powers without point or purpose, and we must close our mental eye to the presence of the powers which should be treated as non-existent. The Court cannot accede to such a proposition. The submission urged by the learned counsel for the petitioner in this behalf must therefore be firmly repelled.

Further in paragraph 14 of the said report the Supreme Court also dealt with as to the contents of the expression material facts and particulars which are to be incorporated by virtue of section 83 (1) of the Act. Paragraph 14 is also reproduced below :

*14. Before we deal with these grounds seriatim, we consider it appropriate to restate the settled position of law as it emerges from the numerous decisions of this Court which have been cited before us in regard to the question as to what exactly is the content of the expression 'material facts and particulars', which the election petitioner shall incorporate in his petition by virtue of Section 83(1) of the Act.*

(1) *What are material facts and particulars ?*

*Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition. Manubhai Nandlal Amarsey v. Popatlal Manilal Joshi & Ors., [1969] 3 S.C.R. 217. (2)*

*(2) In regard to the alleged corrupt practice pertaining to the assistance obtained from a Government servant, the following facts are essential to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded. Hardwari Lal v. Kanwal Singh, [1972] 2 S.C.R. 742:*

- a) mode of assistance;
- b) measure of assistance; and
- c) all various forms of facts pertaining to the assistance.

*(3) In the context of an allegation as regards procuring, obtaining, abetting or attempting to obtain or procure the assistance of Government servants in election it is absolutely essential to plead the following :*

*a) kind or form of assistance obtained or procured;*

*b) in what manner the assistance was obtained or procured or attempted to be obtained or procured by the election-candidate for promoting the prospects of his election. (AIR 1972 SC 515)*

*(4) The returned candidate must be told as to what assistance he was supposed to have sought, the type of assistance, the manner of assistance, the time of assistance, the persons from whom the actual and specific assistance was procured [AIR 1972 SC 515].*

*(5) There must also be a statement in the election petition describing the manner in which the prospects of the election was furthered and the way in which the assistance was rendered. (AIR 1972 SC 515) (supra).*

(6) *The election petition must state with exactness the time of assistance, the manner of assistance, the persons from whom assistance was obtained or procured, the time and date of the same, all these will have to be set out in the particulars. (AIR 1972 SC 515) (supra).*

In the case of *Ram Sukh vs. Dinesh Agarwal*, reported in AIR 2010 SC 1227 a similar situation had arisen that the High Court had dismissed the election petition at the threshold under Order VII Rule 11 CPC on the ground that it did not disclose a cause of action the Supreme Court in para 16 of the report recorded the two arguments raised by the election petitioner-applicant as :

(i) *that even if the election petition was liable to be dismissed ultimately, it should have been dismissed only after affording an opportunity to the election petitioner to adduce evidence in support of his allegation in the petition and*

(ii) *since Section 83 does not find a place in Section 86 of the Act, rejection of petition at the threshold would amount to reading into sub-section (1) of Section 86 an additional ground.*

Both the arguments were repelled by the Supreme Court and held to be misconceived and untenable in paras 17 & 18 of the report in the following words :

17. *In our opinion, both the contentions are misconceived and untenable. Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order VI Rule 16 and Order VII Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him. The submission, therefore, must fail. Coming to the second limb of the argument viz., absence of Section 83 in Section 86 of the Act, which specifically provides for dismissal of an election petition which does not comply with certain provisions of the Act, in our view, the issue is no longer res-integra. A similar plea was negatived by a three- Judge Bench of this Court in *Hardwari Lal v. Kanwal Singh*, wherein speaking for the Bench, A.N. Ray, J. (as His Lordship then was) said : (SCC p.221, para 23).*

23. *Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasised that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. A suit which does not furnish cause of action can be dismissed.*

18. *The issue was again dealt with by this Court in *Azhar Hussain v. Rajiv Gandhi*. Referring to earlier pronouncements of this Court in *Samant N. Balkrishna* (AIR 1969 SC 1201) (supra) and *Udhav Singh v. Madhav Rao Scindia* wherein it was observed that the omission of a single material fact would lead to incomplete cause of action and that an election petition without the material facts is not an election petition at all, the Bench held that all the facts which were essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act and an election petition can be and must be dismissed if it suffers from any such vice.*

*The view expressed in the case of *Azhar Hussain* (supra) finds approval in the above judgment of *Ram Sukh* (supra) by the Supreme Court.*

Sri Jain, learned Senior Counsel appearing for the respondent, referring to paragraph 10 of the judgment of the Apex Court in the case of *Subhash Desai vs. Sharad J. Rao and others*, reported in *AIR 1994 Supp (2) Supreme Court Cases 446* submitted that it is mandatory to plead material facts and if material facts are not pleaded the election petition is liable to be dismissed at the threshold. Paragraph 10 of the report is reproduced below :

*Section 86 vests power in the High Court to dismiss an election petition which has not been properly presented as required by Section 81; or where there has been non-compliance of Section 82 i.e. non-joinder of the necessary parties to the election petition; or for non-compliance of Section 117 i.e. non-deposit of the required amount as security for the costs of the election petition. Section 86 does not contemplate dismissal of the election petition for non-compliance of the requirement of Section 83 of the Act. But Section 83 enjoins that an election petition shall contain concise statement of material facts, and shall set forth full particulars of any corrupt practice that the petitioner alleges, which should be verified and supported by affidavit, so far as the allegations of corrupt practices are concerned. This provision is not only procedural, but has an object behind it; so that a person declared to have been elected, is not dragged to court to defend and support the validity of his election, on allegations of corrupt practice which are not precise and details whereof have not been supported by a proper affidavit. Apart from that, unless the material facts and full particulars of the corrupt practices are set forth properly in the election petition, the person whose election is challenged, is bound to be prejudiced in defending himself of the charges, which have been levelled against him. In view of the repeated pronouncements of this court, that the charge of corrupt practice is quasi-criminal in nature, the person challenging an election on the ground of corrupt practice, cannot take liberty of making any vague or reckless allegation, without taking the responsibility about the correctness thereof. Before the court proceeds to investigate such allegations, the court must be satisfied, that the material facts have been stated along with the full particulars of the corrupt practice, alleged by the petitioner, which have been duly supported by an affidavit. In cases where the court finds that neither material facts have been stated, nor full particulars of the corrupt practice, as required by Section 83, have been furnished in the election petition, the election petition can be dismissed, not under Section 86 but under the provisions of the Code of Civil Procedure, which are applicable, read with Section 83(1) of the Act, saying that it does not disclose a cause of action. This aspect has been examined by this Court in detail in the cases of *Azhar Hussain v. Rajiv Gandhi*, *Hardwari Lal v. Kanwal Singh*.*

Sri Jain further placed reliance on the case of *Udhav Singh vs. Madhav Rao Scindia*, reported in *AIR 1978 Supreme Court 744* and referring to paragraphs 30 & 36 to 40 submitted that pleading has to be construed as it stands without addition or subtraction of words, or sense or change of its apparent grammatical sense, that material facts would mean all the basic facts construing the ingredients of a particular corrupt practice and that petition can be summarily rejected for want of cause of action. With approval the Supreme Court referred the extract from the judgment in the case of *Hardwari Lal* (supra) in paragraph 40 of its report. Paragraphs 30 & 36 to 40 are reproduced below :

*30. We are afraid, this ingenious method of construction after compartmentalisation, dissection, segregation and inversion of the language of the paragraph, suggested by Counsel, runs counter to the cardinal canon of interpretation, according to which, a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context, in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, primarily, from the tenor and terms of his pleading taken as a whole.*

36. Section 83 lays down : "(1) An election petition-

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice and
- (c) . . . . .

37. Like the Code of Civil Procedure, this section also envisages a distinction between "material facts" and "material particulars". Clause (a) of sub-section (1) corresponds to O.6, R.2, while clause (b) is analogous to Order 6, Rules 4 and 6 of the Code. The distinction between "material facts" and "material particulars" is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars, the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.

38. All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practice, "material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election-petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of sec. 83(1) (a).

39. "Particulars", on the other hand, are "the details of the case set up by the party". "Material particulars" within the contemplation of clause (b) of s. 83(i) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative.

40. The distinction between 'material facts' and 'material particulars' was pointed out by this Court in several cases, three of which have been cited at the bar. It is not necessary to refer to all of them. It will be sufficient to close the discussion by extracting what A. N. Ray J. (as he then was) said on this point in Hardwari Lal's case (AIR 1964 SC 1366) (*supra*):

"It is therefore vital that the corrupt practice charged against the respondent should be a full and complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges. Merely, alleging that the respondent obtained or procured or attempted to obtain or procure assistance are extracting words from the statute which will have no meaning unless and until facts are stated to show what that assistance is and how the prospect of election is furthered by such assistance. In the present case, it was not even alleged that the assistance obtained or procured was other than the giving of vote. It was said by counsel for the respondent that because the statute did not render the giving of vote a

*corrupt practice the words "any assistance" were full statement of material fact. The submission is fallacious for the simple reason that the manner of assistance, the measure of assistance are all various aspects of fact to clothe the petition with a cause of action which will call for an answer. Material facts are facts which if established would give the petitioner the relief asked for. If the respondent had not appeared, could the court have given a verdict in favour of the election petitioner? The answer is in the negative because the allegations in the petition did not disclose any cause of action."*

Sri Jain, learned Senior Counsel for the respondent further placed reliance upon the judgment in the case of *Anil Vasudev Salgaonkar vs. Naresh Kushali Shigaonkar*, reported in (2009) 9 Supreme Court Cases 310. Paragraphs 57 to 61 of the report are being reproduced below :

57. *It is settled legal position that all "material facts" must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition. The election petition must contain a concise statement of "material facts" on which the petitioner relies.*

58. *There is no definition of "material facts" either in the Representation of Peoples Act, 1951 nor in the Code of Civil Procedure. In a series of judgments, this court has laid down that all facts necessary to formulate a complete cause of action should be termed as "material facts". All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are material facts. "Material facts" in other words mean the entire bundle of facts which would constitute a complete cause of action. This court in *Harkirat Singh's case (supra)* tried to give various meanings of "material facts". The relevant paragraph 48 of the said judgment is reproduced as under (SCC pp.526-27):-*

48. *"The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', 'indispensable', 'elementary' or 'primary'. [Burton's Legal Thesaurus, (3rd Edn.), p.349]. The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party."*

59. *In the context of a charge of corrupt practice, "material facts" would mean all basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner (respondent herein) is bound to substantiate before he can succeed on that charge. It is also well-settled that if "material facts" are missing they cannot be supplied after expiry of period of limitation for filing the election petition and the pleading becomes deficient.*

60. *According to the appellant, in the election petition, there was no averment whether the bore wells were dug with the consent and/or active knowledge of the appellant. This averment was absolutely imperative and the failure to mention such an important averment in the petition is fatal for the election-petitioner (respondent herein) and the election petition is liable to be summarily dismissed on that ground.*

61. *The legal position has been crystallized by a series of the judgments of this Court that all those facts which are essential to clothe the election petitioner with a complete cause of action are "material facts" which must be pleaded, and the failure to place even a single material fact amounts to disobedience of the mandate of section 83(1)(a) of the Act.*

The other judgment in the case of *Samant N. Balakrishna vs. George Fernandez and others*, reported in *AIR 1969 Supreme Court 1201* has also been relied upon by Sri Jain, learned Senior Counsel for the respondent for the above preposition wherein it has been held that omission of a single material fact would be fatal.

On the other hand Sri Sharma, learned Senior Counsel appearing for the petition submitted that at this stage a limited inquiry is to be made only to see whether the petition should be thrown out at the threshold if the pleadings are taken as a whole and the material facts stated construed a cause of action and raised a triable issue. It is only to be seen that substantial compliance of the provisions of the Act has been made and there is ample power with the Court to cure any defect or if necessary call for supporting material so that the issue raised is tried and substantial justice is done to the parties. Taking the literal meaning of the provisions would defeat the purpose of the Act. Reliance has been placed upon Constitutional Bench judgments of the Apex Court in the cases of *Ch. Subbarao vs. Member of Election Tribunal Hyderabad*, reported in *AIR 1964 SC 1027* and *Murarka Radhey Shyam Ram Kumar vs. Roop Singh Rathore and others*, reported in *AIR 1964 SC 1545*.

It is also the submission of Sri Sharma that in the case of *Azhar Hussain* (supra) the Supreme Court did not notice the aforesaid two Constitutional Bench judgments of the Apex Court and therefore the law laid down in the case of *Azhar Hussain* (supra) may not be relied upon. Further reliance has been placed upon the judgment in the case of *Virendra Nath Gautam vs. Satpal Singh and others*, reported in 2007 (3) SC 617 which explains the distinction between facts required to be proved i.e. basic or primary facts or *facta probanda* and the facts by means of which they are proved i.e. particulars or *facta probantia*. Following three judgments have also been relied upon in support of the submission that petition should not be thrown out at the threshold where pleadings show that a triable case is made out :

1. *T.M. Jacob vs. C. Paulose and others* (1999) 4 SCC 274.
2. *G.M. Siddeshwar vs. Prasanna Kumar*. (2013) 4 SCC 776.
3. *Ashraf Kokkur vs. K.V. Abdul Khader and others*, 2015 (1) SCC 129.

Sri Sharma, learned Senior Counsel for the petitioners placed reliance on Paragraphs 12, 18 & 19 of the judgment in the case of *Ch. Subbarao* (supra). In the said case of *Ch. Subbarao* the election petitioner had prayed for setting aside the election of the returned candidate on the ground of non-compliance of section 81 (3) of the Act. It was not a case relating to corrupt practice. It is in this context that the Apex Court in paragraph 12 of the said report made the following observations :

*Though the learned counsel for the appellant made several submissions, we propose to deal with only one, as the same is sufficient for the disposal of this appeal. This was that in the circumstances of the case there had been a substantial compliance with the requirements of s. 81(3). Before, however, dealing with it, it will be convenient to refer to some of the submissions made to us by the learned Solicitor-General appearing for the contesting respondents. He submitted to us certain propositions which however we consider really unexceptionable. He said that an election petition was not to be equated to an election at law or in equity, but that as the rights were purely the creature of statute, if the statute rendered any particular requirement mandatory, the courts possessed and could exercise no dispensing power to waive non-compliance. We consider these propositions are sound and it is in the light of these basic positions that we shall proceed to consider whether the omission to add the words "true copy" in the copies which were admittedly exact copies of the petition, constituted a non-compliance with s. 81 (3) as to render the petition liable to be rejected under s. 90(3) of the Act.*

It may also be noted here that one of the grounds taken for dismissing the election petition for noncompliance of section 81 (3) of the Act was that the words “true copy” were omitted by the election petitioner. In paragraph 19 of the said report the Apex Court observed that “.....while we are conscious of the need for expeditious disposal of election petitions, and for the strict enforcement of provisions designed to achieve this purpose, we cannot be oblivious to the circumstance that to read every requirement literally might equally defeat the purpose for which Part VI is intended, viz., that elections are conducted in accordance with the relevant statutory provisions framed to ensure purity and orderliness and that the candidate who has not obtained a majority of valid votes or has obtained it in flagrant breach of the statutory provisions is not held entitled to represent the constituency”

The other Constitutional Bench judgment in *Murarka Radhey Shyam Ram Kumar* (supra), also, relates to the objection being raised for dismissal of the election petition for non-compliance of section 81 (3) of the Act. In paragraph 8 of the said judgment, Supreme Court observed that “.....it seems clear to us that reading the relevant sections in Part VI of the Act, it is impossible to accept the contention that a defect in verification which is to be made in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings as required by cl. (c) of sub-s. (1) of s. 83 is fatal to the maintainability of the petition”. Again this case is not related to any allegations of corrupt practice. It is not the argument of Sri Sharma that the judgment in the case of *Azhar Hussain* (supra) has ever been held to be not a good law or that it has been overruled by a larger bench of the Supreme Court.

While referring to the judgment in the case of *T.M. Jacob* (supra), Sri Sharma, learned Senior Counsel for the petitioners placed reliance on Paragraph 38 of the report which reads as under :

38. We are unable to agree with Mr. Salve that since proceedings in election petitions are purely statutory proceedings and not “civil proceedings” as commonly understood, there is no room for invoking and importing the doctrine of substantial compliance into section 86(1) read with section 81(3) of the Act. It is too late in the day to so urge. The law as settled by the two Constitution Bench decisions of this Court referred to above is by itself sufficient to repel the argument of Mr. Salve. That apart, to our mind, the Legislative intent appears to be quite clear, since it divides violations into two classes-those violations which would entail dismissal of the election petition under section 86(1) of the Act like non-compliance with section 81(3) and those violations which attract section 83(1) of the Act, i.e. non-compliance with the provisions of section 83. It is only the violation of Section 81 of the Act which can attract the application of the doctrine of substantial compliance as expounded in *Murarka Radhey Shyam* and *Ch. Subbarao* cases. The defect of the type provided in Section 83 of the Act, on the other hand, can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. This position clearly emerges from the provisions of Section 83(1) and 86(5) of the Act, which read :

83. *Contents of petition.- (1) An election petition -*

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

86. *Trial of election petitions.- (1)-(4)*

(5) *The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.*

The question in the present case is not of allowing amendment or amplification with regard to the corrupt practice but it relates to as to whether the material facts have been stated so as to constitute a complete cause of action. Selection 86 (5) of the Act although confers power with the High Court to allow the particulars of any corrupt practice alleged in the petition to be amended or amplified but at the same time it prohibits amendment of the petition which have effect of introducing particulars of any corrupt practice not previously alleged in the petition. The above case of *T.M. Jacob* as such is of no help to the petitioners.

While referring to the judgment in the case of *Virendra Nath Gautam* (supra), Sri Sharma, learned Senior Counsel for the petitioners placed reliance on Paragraphs 50 & 52 of the report. It would be relevant to consider Paragraph 51 of the report also. Paragraphs 50, 51 & 52 are reproduced below :

50. *There is distinction between *facta probanda* (the facts required to be proved, i.e. material facts) and *facta probantia* (the facts by means of which they are proved, i.e. particulars or evidence). It is settled law that pleadings must contain only *facta probanda* and not *facta probantia*. The material facts on which the party relies for his claim are called *facta probanda* and they must be stated in the pleadings. But the facts or facts by means of which *facta probanda* (material facts) are proved and which are in the nature of *facta probantia* (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.*

51. *In our considered opinion, material facts which are required to be pleaded in the Election Petition as required by Section 83 (1) of the Act read with Order 7, Rule 11(a) of the Code have been pleaded by the election petitioner, cause of action has been disclosed in the Election Petition and, hence, the petition could not have been dismissed by the High Court. The impugned order of the High Court suffers from infirmity and cannot be sustained.*

52. *The High Court, in our considered opinion, stepped into prohibited area of considering correctness of allegations and evidence in support of averments by entering into the merits of the case which would be permissible only at the stage of trial of the Election Petition and not at the stage of consideration whether the Election Petition was maintainable and dismissed the petition. The said action, therefore, cannot be upheld and the order deserves to be set aside.*

The above case also does not help the petitioners, in as much as, in Paragraph 51 of the report, the Supreme Court was of the view that the election petition disclosed a cause of action and therefore could not have been dismissed by the High Court by entering into the correctness of allegations and evidence in support of averments and entering into the merits of the case which would be permissible only at the stage of trial.

While referring to the judgment of the Apex Court in the case of *G.M. Siddehswar* (supra), Sri Sharma, learned Senior Counsel for the petitioners placed reliance on Paragraphs 49 & 52 of the report. It would be relevant to refer to Paragraphs 49 to 52, which are reproduced below :

49. *In *T.M. Jacob v. C. Poulose* this Court reiterated the doctrine of substantial compliance as mentioned in *Murarka Radhey Shyam Ram Kumar and Ch. Subba Rao* and also introduced the doctrine of curability on the principles contained in the CPC. It was held that the defect in the*

*affidavit in that case was curable and was not of such a fatal nature as to attract dismissal of the election petition at the threshold.*

50. *The doctrine of substantial compliance as well as the doctrine of curability were followed in V. Narayanaswamy v. C.P. Thirunavukkarasu. This Court held that a defect in verification of an affidavit is not fatal to the election petition and it could be cured. Following Moidutty it was held that if the election petition falls foul of Order 6 Rule 16 and Order 7 Rule 11 CPC and does not disclose a cause of action then it has to be rejected at the threshold.*

51. *Somewhat more recently, in Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar this Court reiterated this position in law and held: (SC C p.324, para 50)*

*“The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.”*

52. *The principles emerging from these decisions are that although non- compliance with the provisions of Section 83 of the Act is a curable defect, yet there must be substantial compliance with the provisions thereof. However, if there is total and complete non-compliance with the provisions of Section 83 of the Act, then the petition cannot be described as an election petition and may be dismissed at the threshold.*

A reading of the above paragraphs clearly indicates that the Apex Court while referring to previous judgments has approved the preposition that where a cause of action has not been disclosed or furnished in the election petition the same can be dismissed under the provision of CPC i.e. Order VII Rule 11.

While referring to the judgment in the case of *Ashraf Kokkur* (supra) Sri Sharma, learned Senior Counsel for the petitioners relied upon Paragraphs 21 & 22 of the report which are reproduced below :

21. *The pleadings, if taken as a whole, would clearly show that they constitute the material facts so as to pose a triable issue as to whether the first respondent is disqualified to contest election to the Kerala State Legislative Assembly while holding an office of profit under the State government as Chairperson of the Kerala State Wakf Board. The question is not whether the Chairperson of the Kerala State Wakf Board is an office of profit or not. That is the issue to be tried. Question is whether the petitioner has raised such a question in the election petition. The disqualification under the Constitution of India being, holding an office of profit under the State Government. Petitioner has furnished all the material particulars in that regard. Therefore, the petition discloses a cause of action.*

22. *After all, the inquiry under Order VII Rule 11(a) of CPC is only as to whether the facts as pleaded disclose a cause of action and not complete cause of action. The limited inquiry is only to see whether the petition should be thrown out at the threshold. In an election petition, the requirement under Section 83 of the RP Act is to provide a precise and concise statement of material facts. The expression ‘material facts’ plainly means facts pertaining to the subject-matter and which are relied on by the election petitioner. If the party does not prove those facts, he fails at the trial (see *Philipps v. Philipps* (QBD p. 133); *Mohan Rawale v. Damodar Tatyaba* (SCC p. 399, para 16).*

On reading of the above paragraphs it is to be noted that in the said case the Supreme Court found that the petitioner had furnished all the material particulars and the petition disclosed a cause of action. The power under Order VII Rule 11(a) CPC requires an inquiry as to whether the petitioner had pleaded a cause of action or not.

## **GROUNDs and PLEADINGs – Grounds A & B**

In the backdrop of the legal provisions and the law laid down the grounds and pleadings are taken up for consideration.

Ground A & B relate to improper acceptance of the nomination paper of the returned candidate (the respondent). Both the Grounds A & B as contained in the petition are reproduced below :

- (A) Because the election of returned candidate has been materially affected on account of improper acceptance of the nomination paper of Returned Candidate by the *Returning Officer*. *The Returning Officer has acted against the provision of Section 33A(2) of the Act read with Rule 4A of the Rules framed thereunder.*
- (B) *Because the election of the returned candidate has been materially affected on account of the fact that once the Returned Candidate presented the nomination papers showing the name of the spouse Mrs. Jashoda Ben, it was a mandatory requirement of Section 33A (2) read with Rule 4A to filled up the prescribed Form-26 in a manner prescribed therein. The Returned Candidate in his Form, details of property, asset, liabilities, profession, etc. of his wife, if any, has been shown. Nomination paper presented by the returned candidate instead of showing the details of properties, assets, liabilities and the profession of the spouse has been mentioned as "Not Known". The requirement of the Act does not permit such declaration. The declaration in Form 26 of the returned candidate on oath is contradictory to the contents of Part 'A' and 'B' of Column 7, 8 & 9 and Part 'B' of Form-26 in relation to the spouse of the returned candidate. Thus, the nomination form of the Returned Candidate was incomplete and the same was improperly accepted, as the non disclosure of the assets and required information under the Form-26 relating to the living wife is nothing but denial to disclosure of mandatory requirement of law.*

To substantiate these grounds paragraph nos. 7, 8, 9 & 10 of the petition contain the relevant facts. In paragraph no.7 it has been stated that the nomination paper of the returned candidate was presented on 24.04.2014 and the same was improperly accepted by the Returning Officer. The nomination paper is to be filed in terms of proforma prescribed by the Election Commission in Form-26. It is to be supported by an affidavit of the candidate which is contained in Part 'A' & Part 'B' of the nomination paper. The returned candidate in the said affidavit disclosed the name of his spouse as Mrs. Jashoda Ben. The candidate is required to disclose the details regarding spouse as required in paragraph nos. 4, 7, 7A, 7B, 8 & 9 of Form No. 26 and similarly paragraph nos. 7, 8, 9 & 10 of Part B of Form No. 26. According to the petitioners, as stated in paragraph 7 itself, returned candidate instead of disclosing the required details has only stated/disclosed "Not Known" which does amount to disclosure of the required information. It is also stated in the same paragraph of the petition that paragraph no. 9 of Part A of Form No. 26 required the details of the profession/occupation where also the respondent has stated/declared "Not Known".

In paragraph no.8 of the petition the averments contained are to the effect that the information provided in Item Nos.7 and 8 of Part "A" and Item Nos.8, 9 & 10 of Part "B" of Form-26, the returned candidate has made a declaration on behalf of the spouse that the details provided in these columns are correct and no concealment of fact has been made. A copy of the affidavit of the returned candidate has been attached as Schedule-A.

The averments contained in paragraph no.9 of the petition is purely legal in nature. No factual averments have been made in paragraph no.9.

First part of paragraph no.10 of the petition deals with legal pronouncement in the case of *Kishan Shanker Kathore vs. Arun Duttary Sawant and others*, reported in *JT 2014 Supreme Court* 657, relating to outcome in the case of nondisclosure of details of movable and immovable property owned by spouse. The second part of paragraph no.10 of the petition is also a continuation of the same Supreme Court judgment and also quotes the verification part of the affidavit of the respondent filed along with the nomination paper.

The objection raised by learned Senior Counsel appearing for the respondent is firstly that there was no nondisclosure by the respondent, secondly that the information furnished by the respondent was correct and true to the best of his knowledge and thirdly that the contents of these paragraphs do not make out a case which may lead to a triabe issue.

Before proceeding further with the respective arguments that shall be dealt with at a later stage, the relevant statutory provisions may be noted. Sri Jain, learned Senior Counsel appearing for the respondent referred to sections 33A, 36 and 100 (1) (d-i) of the Act which are being reproduced here under :

**33A. Right to information.-** (1) *A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether -*

- (i) *he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;*
- (ii) *he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.*

(2) *The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).*

(3) *The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub- section (2), at a conspicuous place at this office for the information of the electors relating to a constituency for which the nomination paper is delivered.]*

**36. Scrutiny of nomination.-** (1) *On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorized in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.*

(2) *The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:-*

- (a) *that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :-*

[Part II of this Act and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963); or

- (b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or
- (c) that the signature of the candidate or the proposer on the nomination paper is not genuine.]

(3) Nothing contained in clause (b) or clause (c) of sub-section (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated means of another nomination paper in respect of which no irregularity has been committed.

(4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:-

Provided that in case an objection raised by the returning officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).

(8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.

**100. Grounds for declaring election to be void.**—(1) Subject to the provisions of sub-section (2) if the High Court is of opinion -

- (a) .....
- (b) .....
- (c) .....
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected -
- (i) 1. by the improper acceptance of any nomination, or

- (ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent, or
- (iii) By the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
- (iv) By any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

*the High Court shall declare the election of the returned candidate to be void.*

The requirement for disclosure of necessary information by a candidate is provided under section 33A of the Act. The candidate is required to file an affidavit disclosing the necessary information as detailed in Form-26. The averment made by the petitioners objects only to the words "Not Known" used in so far as the relevant information about movable and immovable assets of spouse of the respondent is concerned. Apart from these "Not Known" words used at several places in the form/affidavit there is no other irregularity or illegality or any nondisclosure pointed out against the respondent.

Further taking clue from these used words "Not Known" in so far as the details of the spouse of the returned candidate is concerned the second attack is to the verification clause of the affidavit wherein it has been stated that the deponent do hereby verifies and declares that the contents of this affidavit are true and correct to the best of my knowledge and no part of it is false and nothing material has been concealed therefrom. The submission is that on one hand the words 'Not Known' is being used and on the other hand in the verification such contents have been verified to be true and correct to the best of his knowledge. On the one hand there is knowledge and on the other hand there is consistent use of words 'Not Known' instead of providing correct information.

Sri Jain, learned Senior Counsel for the respondent submitted that the petitioners have nowhere alleged in their petition that any information provided by the respondent is either incorrect to his belief or knowledge or that it is false or that any part of the information has been concealed. It is his submission that in order to allege that the use of words "Not Known" was either false or any material has been concealed then this fact ought to have been alleged by the petitioners in their petition. According to Sri Jain not a single word has been mentioned in the petition stating that the spouse of the respondent had any asset or liability in the knowledge of the respondent and such asset or liability has not been disclosed in the affidavit thus making the declaration false. Merely by alleging that the use of words "Not Known" is false and whereby concealment has been made by the respondent does not constitute a cause of action. To prove that the respondent had made a false declaration, some information or fact relating to any asset or liability of the spouse of the respondent ought to have been placed on the petition and then other facts could have been stated whether or not there has been a nondisclosure or concealment of fact which was in the knowledge of the respondent.

On the other hand Sri Sharma, learned Senior Counsel appearing for the petitioners submitted that it is a pure and simple case of complete and deliberate nondisclosure of the assets and liability of the spouse by the respondent. According to him once the respondent has made declaration that he has a wife then it is highly improbable or unbelievable that the respondent would not be knowing about assets and liability of his wife. By stating "Not Known" in all the columns the respondent had deliberately concealed the information. The nomination paper being not in accordance to law as it did not contain all the required information and declaration suffered from the vice of nondisclosure was liable to be rejected. It is further submitted by Sri Sharma, learned Senior Counsel for the petitioners that on the one hand in the verification clause it has been stated by the respondent that all the information provided is true to the best of his knowledge and belief as such

the verification clause is self contradictory to the contents of other information about the spouse of the respondent in various paragraphs of Form No.26.

Sri Sharma, learned Senior Counsel for the petitioners further submitted that in any case whether the returned candidate is aware of the details of the assets and liability of his wife or not would be a question which would raise a triable issue and the facts narrated in paragraph nos.7 to 10 would disclose a cause of action for trial of the election petition. In support of his submission Sri Sharma placed reliance upon a judgment of the Apex Court in the case of *Union of India vs. Association for Democratic Reforms and another*, reported in (2002) 4 SCC 294 wherein the Supreme Court agreed with the directions issued by the Calcutta High Court to the Election Commission of India requiring the Election Commission to call certain information relating to criminal antecedents, assets, liability and educational qualifications of each of the candidates contesting the election of the Parliament and State Legislature. It was in pursuance to the aforesaid judgment of the Apex Court that an amendment was brought in the Act in the year 2002 by the Amendment Act No.72 of 2002 inserting sections 33A and 33B in the Act. He further submitted that the insertion of section 33B was challenged before the Apex Court in the case of *People's Union for Civil Liberties (PUCL) and another vs. Union of India and two others*, reported in (2003) 4 SCC 399 wherein the Apex Court struck down section 33B of the Act and again affirmed the directions for disclosure of criminal antecedents, assets, liability and educational qualifications of the candidate, his spouse and dependent given in earlier decision.

Sri Sharma then referred to another decision of the Apex Court in the case of *Kishan Shankar Kathore vs. Arun Dattatray Sawant and others*, reported in (2014) 14 SCC 162 wherein the Apex Court held that if required information as per the format in respect of the assets of the candidate, his wife and dependent children is not given it would amount to suppression/nondisclosure and the same would entail rejection of the nomination paper. In so far as the duty of the Returning Officer is concerned it was laid down that only a summary inquiry could be made by the Returning Officer regarding disclosure of such information and detailed inquiry could be deferred to a later date for thorough investigation and a verdict by Court upon filing of an election petition on the ground of furnishing of wrong information or suppression of material information by the candidate in the nomination form.

Sri Sharma next relied upon a judgment of the Apex Court in the case of *Resurgence India vs. Election Commission of India and another*, reported in (2014) 14 SCC 189 wherein the Supreme Court held that where relevant columns are left blank and information is not furnished then it would render the affidavit itself nugatory and the Returning Officer would be obliged to reject the nomination paper.

Lastly Sri Sharma relied upon a judgment of the Apex Court dated 28.10.2016 passed in *Civil Appeal Nos.2649 and 2829 of 2016, Mairembam Prithviraj and others vs. Pukhem Sharatchandra and others*, wherein the Supreme Court held that the disclosure of the assets, liability, criminal antecedents and education qualifications are mandatory and obligatory and non-supply of the same would mean nondisclosure/suppression of material information entailing rejection of the nomination paper.

On the basis of the aforesaid judgments Sri Sharma submitted that the respondent having not disclosed the complete details and information relating to his spouse, which was mandatory and obligatory, and merely mentioning the words "Not Known" in several columns did not make full disclosure rather concealed material information as such his nomination paper was improperly accepted by the Returning Officer. Once the nomination has improperly been accepted by the Returning Officer it was sufficient ground for setting aside the election of the returned candidate (respondent).

At the cost of repetition it may be recorded here that on behalf of the respondent Sri Jain, learned Senior Counsel submitted that the nomination paper of the respondent contained full and complete disclosure of facts within the knowledge of the respondent. He further submitted that the petitioners do not allege that the respondent had knowledge of any particular fact relating to asset or liability of his spouse which has not been disclosed or deliberately concealed. According to him the petitioners' allege that the use of words "Not Known" in various columns of the nomination form and the affidavit cannot be by itself in any manner imply or indicate that the respondent had the knowledge but still did not chose to disclose or state the details of the assets and liability. He further submitted that in the case of *Resurgence India* (supra) relied upon the the petitioners the Supreme Court has itself held that not known is a valid information to the knowledge of the person making the disclosure or filing the nomination paper or the affidavit. The Supreme Court further observed in the same case that at least minimum efforts to remark "NIL" or "NOT APPLICABLE" or "NOT KNOWN" in the columns must be mentioned and they should not be left blank. The respondent having used the words "Not Known" clearly meant that he had no knowledge about the assets and liability of his spouse. According to him even if despite knowledge of the asset and liability the words 'Not Known' were used by the respondents then until and unless specific averments and facts are pleaded by the petitioners, no triable issue can be raised for such use of words "Not Known" in the nomination paper. Sri Jain, learned Senior Counsel has further elaborated his argument and has gone to the extent of submitting that even looking to the pleadings, one or a single material fact would entail an outcome that the cause of action has not been completely made out. He further submitted that to establish a cause of action each and every material fact which would constitute cause of action has to be pleaded. In the absence of pleadings of all material facts, no cause of action can be said to have accrued or arisen.

In the present case a bare reading of the pleadings and the averments contained in paragraphs 7 to 10 of the petition, the petitioners have not pleaded that (i) the respondent knew or had knowledge of the asset and liability of his wife Smt. Jashoda Ben, (ii) the petitioners have not pleaded that Smt. Jashoda Ben was possessed of any assets or that she had any liabilities and (iii) the respondent had knowledge of such liabilities and assets of his wife Smt. Jashoda Ben but did not purposely disclose the same in his nomination paper. According to him absence of these averments which were material facts completely fail to make out a cause of action. He thus submits that the ground nos.A & B, in so far as use of words "Not Known" is concerned, are bereft of any merits.

Sri Jain, learned Senior Counsel for the respondent further submitted, referring to verification clause that the said ground is also without any merit and does not make out any cause of action. Form-26 in the form of affidavit has been filed as Schedule-I to the election petition. The verification clause reads as under :

*I, the deponent, about named, do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom. I further declare that :—*

- (a) *There is no case of conviction or pending case against me other than those mentioned in item 5 and 6 of Part A and B above.*
- (b) *I, my spouse, or my dependents do not have any asset or liability, other than those mentioned in items 7 and 8 of Part A and items 8, 9 and 10 of Part B above.*

Verified at AHMEDABAD, this the 22ND day of April, 2014.

The petitioners have no grievance so far as Clause A Part is concerned but they have serious objections to Clause B of the verification clause which according to them is self contradictory to the information provided in the affidavit. Clause B reads as *I, my spouse, or my dependents do not have any asset or liability, other than those mentioned in items 7 and 8 of Part A and items 8, 9 and 10 of Part B above.* According to the petitioners once the details of asset and liabilities have been mentioned as “Not Known” in the affidavit in various columns how could this declaration be made by the spouse or by the respondent that they do not have any assets or liabilities other than those mentioned.

Sri Jain, learned Senior Counsel for the respondent submitted that this verification has been given by the respondent and not by his wife. The facts mentioned in the affidavit are provided as per knowledge of the respondent and not his wife. The verification clause itself starts from I, the deponent and the deponent here is the respondent and not his wife and if the deponent has further stated that he verifies and declares that the contents of this affidavit are true and correct to the best of his knowledge and belief and that no part of it is false and nothing material has been concealed, no concealment or nondisclosure can be attributed to the respondent or to the person making the verification. It was thus submitted that this ground raised by the petitioner being based on the contents of the affidavit itself does not require any trial as this ground cannot be sustained on the material already on record.

### **DISCUSSION – Grounds A & B**

Having considered the submission and the law laid down, the question that is to be decided here is whether a triable issue on Grounds A & B set out in the petition has been made out or not? Whether the petitioners have pleaded the basic material facts which would constitute a cause of action ? The ground of improper acceptance of the nomination paper is only based on the words used as “Not Known” in the disclosure of the movable and immovable assets, liabilities and profession of the spouse of the respondent. Paragraph nos.7, 8, 9 and 10 of the petition are relevant paragraphs containing pleadings with regard to Grounds A & B. There can be no denial of the fact that a person may not know the assets and liabilities of his spouse. There can also be no denial of the fact that a person knowing the assets and liabilities of his spouse may not want to disclose it. But if the petitioners allege that the respondent knew about the assets and liabilities of his spouse and has deliberately not disclosed the same then it can be said that the respondent has not completely and honestly made the disclosure. So long as the petitioners do not allege that the respondent knew but still did not disclose, it cannot be assumed that the respondent knew and deliberately did not disclose. No presumption or assumption can be drawn with regard to the knowledge of the respondent regarding the information of assets, liabilities and occupation / profession of his spouse.

Paragraphs 7, 8, 9 and 10 of the petition does not contain any such averments that the respondent despite having knowledge of the assets and liabilities of his spouse did not disclose the same. In the absence of any such averments or pleading, as already observed, there can be no assumption that it was a deliberate nondisclosure by the respondent about the assets and liabilities of his spouse. In order to raise this ground it was mandatory for the petitioners to make specific pleadings not only about the knowledge of the respondent regarding the assets and liabilities of his spouse but also about the assets and liabilities actually held by the spouse of the respondent. The other aspect would be that the spouse may be having assets and liabilities but still the same may not be known to the respondent. In that event it would be for the respondent to prove and burden would be on him to establish that he had no knowledge of such assets and liabilities of his spouse. In paragraph 7 to 10 of the petition the petitioners have not come up with the details or particulars of any assets and liabilities of the spouse of the respondent. If the same was pleaded and mentioned, the respondent could be put to trial and called upon to explain as to whether he had or he did not have the knowledge of the same. Since no such particulars or details of any assets and liabilities of

the spouse of the respondent has been pleaded, it would be a futile exercise to call upon the respondent and put such issue to trial. The petitioners have thus utterly failed to plead material facts which could constitute a cause of action.

In so far as the verification part is concerned, the ground raised and the supporting pleadings in paragraph 8, in particular, also does not make out a triable issue or complete cause of action which could be tried or respondent be called upon to discharge his burden. The affidavit as already referred to above is Schedule-I to the petition. The columns have been filled up. The verification has been on the personal knowledge and belief of the respondent. The petitioners have not alleged or pleaded that the belief and knowledge of the respondent is incorrect or that he had knowledge and belief of any asset and liabilities of his spouse. As such apparently no fault can be found in the verification clause in the absence of any pleadings. This ground also does not disclose a cause of action.

Sri Sharma, learned Senior Counsel has also sought to argue that the court can always call upon the petitioners to furnish further and better details. That would be a case only where the particulars may be lacking but not in a case where the material facts are lacking. It is only if the material facts are pleaded, then in order to supplement or substantiate it evidence can be called upon by the Court.

In case the petitioners felt that any pleadings with regard to any material facts or particulars have been left out and were required to be incorporated by way of amendment or modification then it was for the petitioners to make an application and not force upon the Court to call upon the petitioners to file an amendment application or supplement the pleadings and the material on record. The Court is not a party to the proceeding. The Court has to adjudicate upon pleadings as they are, and, unless the petitioners request to make an application for amendment they cannot be directed to do so by the Court.

In view of the above discussion it is held that on Grounds A & B the petitioners have failed to state material facts in paragraphs 7 to 10 of the petition which may constitute a cause of action.

### **GROUNDs and PLEADINGs – Grounds G, H & I**

Grounds G, H & I stated in paragraph 6 of the petition relate to the corrupt practice committed by the returned candidate, his election agents or persons associated with the political party (BJP) with the consent of the returned candidate in terms of section 123 (6) of the Act by incurring or authorizing expenditure in contravention of section 77 of the Act. These grounds are substantiated by the averments contained in paragraphs 28 to 33 of the petition.

It is stated in Ground G that the Election Commission of India in respect of 77 Varanasi Parliamentary Constituency had fixed Rs.70 lakhs as the total expenditure which could be incurred by the candidate. It is further stated that the returned candidate, his agents or persons associated with consent of the returned candidate exceeded the prescribed expenditure by spending about Rs.50 crores in the election of 77 Varanasi Parliamentary Constituency, which was in contravention of the provisions of section 77 read with section 123 (6) of the Act.

In Ground H it has been mentioned that section 77 of the Act mandates that the candidates at the election themselves or by their election agents will maintain a separate account of all expenditure in connection with the election incurred or authorized by them between the date on which they have been nominated and the date of the declaration of the result thereof, both dates are inclusive. It is further mentioned in the same ground that contravention of section 77 of the Act in view of section 123 (6) of the Act would amount to corrupt practice and would fall within the

purview of section 100 (1) (b) of the Act for declaring the election to be void. It is further stated that in the present case the returned candidate, his election agents or associated persons with his consent exceeded the aforesaid limit of expenditure and also did not maintain the complete and correct account of their entire expenditure.

In Ground I it is stated that the election of the returned candidate was materially affected on account of the fact that the expenditure incurred by the returned candidate in his election campaign as “*ABKI BAR MODI SARKAR*” is not propagation of the program of the political party i.e. Bhartiya Janta Party but a self promotion seeking votes for himself as a Prime Ministerial candidate which is against the tenets of the basic frame work of the Constitution of India. It is lastly stated in the said ground that the respondent (returned candidate) was seeking vote for himself and has not propagated election programme of Bhartiya Janta Party which is contained in its manifesto.

Before advertiring to the factual averments made in paragraphs 28 to 33 in support of the aforesaid ground, the relevant statutory provisions and the legal position may be noted.

Sections 77, 78, 78-A, 78-B, 79, 100 (1) (b) and 123 (6) of the Act are relevant for dealing with the Grounds G, H & I relating to corrupt practice committed by the returned candidate or his election agent. For ready reference the said sections are reproduced below :

**77. Account of election expenses and maximum thereof.**—(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between [the date on which he has been nominated] and the date of declaration of the result thereof, both dates inclusive.

*Explanation 1.-For the removal of doubts, it is hereby declared that—*

- (a) *the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section;*
- (b) *any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.*

*Explanation 2.-For the purpose of clause (a) of Explanation 1, the expression “leaders of a political party”, in respect of any election, means,—*

- (i) *where such political party is a recognised political party, such persons not exceeding forty in number, and*
- (ii) *where such political party is other than a recognised political party, such persons not exceeding twenty in number,*

*whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of*

seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act:

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.]

**78. Lodging of account with the (district election officer).**—(1) Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates, lodge with the [district election officer] an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 77.

**78-A. Free supply of copies of electoral rolls.**—(1) The Government shall, at any election to be held for the purposes of constituting the House of the People or the Legislative Assembly of a State, supply, free of cost, to the candidates of recognised political parties such number of copies of the electoral roll, as finally published under the Representation of the People Act, 1950 (43 of 1950) and such other material as may be prescribed.

(2) The material referred to in sub-section (1) shall be supplied,—

- (i) subject to such conditions as may be imposed by the Central Government in consultation with the Election Commission with respect to the reduction of the maximum expenditure which may be incurred by the candidate under section 77; and
- (ii) through such officers as may be specified by the Election Commission who shall act in accordance with such general or special directions as may be given by the Election Commission.

**78-B. Supply of certain items to candidates, etc.**—(1) The Election Commission shall, at any time between the date of publication of the notification calling the election for the purposes of constituting the House of the People or the Legislative Assembly of a State and the date on which the poll is to be taken, supply or cause to be supplied, such items as the Central Government may, by order, determine in consultation with the Election Commission, to the electors in the constituencies concerned or to the candidates set up by the recognised political parties.

(2) Where the Election Commission supplies the items to the candidates under sub-section (1), the Central Government may, in consultation with the Election Commission, impose conditions with respect to the reduction of the maximum expenditure which may be incurred by the candidate under section 77.

**Explanation.**—For the purposes of section 39A, this Chapter and clause (hh) of sub- section (2) of section 169, the expression “recognised political party”, has the meaning assigned to it in the Election Symbols (Reservation and Allotment) Order, 1968.]

**79. Definitions.**—In this Part and in [Part VII] unless the context otherwise requires,—

*[(a) any reference to a High Court or to the Chief Justice or Judge of a High Court shall, in relation to a Union territory having a Court of the Judicial Commissioner, be construed as a reference to the said Court of the Judicial Commissioner or to the Judicial Commissioner or any Additional Judicial Commissioner, as the case may be;]*

*[(b) "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election;]*

*(c) "costs" means all costs, charges and expenses of, or incidental to, a trial of an election petition;*

*(d) "electoral right" means the right of a person to stand or not to stand as, or [to withdraw or not to withdraw] from being, a candidate, or to vote or refrain from voting at an election;*

*(e) "High Court" means the High Court within the local limits of whose jurisdiction the election to which the election petition relates has been held;]*

*(f) "returned candidate" means a candidate whose name has been published under section 67 as duly elected.*

**100. Grounds for declaring election to be void.**—*[(1) Subject to the provisions of sub-section (2) if [the High Court] is of opinion—*

*(a) .....*

*(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or*

*(c) .....*

*(d) .....*

*(i) .....*

*(ii) .....*

*(iii) .....*

*(iv) .....*

*[the High Court] shall declare the election of the returned candidate to be void.]*

*(2) .....*

*(a) .....*

*(b) .....*

*(c) .....*

*(d) .....*

**123. Corrupt practices.**—*The following shall be deemed to be corrupt practices for the purposes of this Act:—*

*(1) .....*

*(2) .....*

*(3) ..... (3A)*

*..... (3B) .....*

*(4) .....*

*(5) .....*

*(6) The incurring or authorizing of expenditure in contravention of section 77.*

(7) .....

(8) .....

Section 77 of the Act provides for the account of election expenses and maximum thereof. It requires the candidate at an election to maintain a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive, either by himself or by his election agent. Explanations 1 & 2 to section 77 of the Act further clarifies certain doubts which may arise.

Section 78 of the Act provides for lodging of account with the District Election Officer. This section mandates that every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidates at the election and the dates of their election are different, the later of those two dates, lodge with the District Election Officer an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 77 of the Act.

Section 79 sub-clause (b) of the Act defines 'candidate' to be a person who has been or claims to have been duly nominated as a candidate at any election.

Section 100 (1) (b) of the Act provides that if any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent would be a ground if proved for the High Court to declare the election of the returned candidate to be void. The other grounds for declaring the election to be void are also enumerated in section 100 (1) sub-clauses (a), (c) and (d).

Sub-sections (1) to (8) of section 123 of the Act deals with corrupt practices for the purpose of the Act. In the present case the petitioners have alleged corrupt practice defined in sub-section (6) of section 123 of the Act.

Grounds raised by the petitioners in Grounds G, H & I are only of corrupt practices as stated under section 123 (6) of the Act i.e. incurring or authorizing of expenditure in contravention of section 77 of the Act. Requirements of section 77 can be analyzed as follows-

- (i) For every election every candidate has to maintain an account of expenditure.
- (ii) Account is to be maintained by the candidate or his election agent.
- (iii) The account has to be separate and correct account.
- (iv) Period for which account is to be maintained is from the date on which a candidate has been nominated till the date of declaration of the result, both dates inclusive.
- (v) Account should relate to all expenditure in connection with the election- to be incurred or authorized by the candidate or his election agent.

Section 77 (2) provides that the account so maintained shall contain particulars as may be prescribed.

Section 77(3) of the Act provides that the total of the said expenditure shall not exceed the amount as may be prescribed.

Section 123 (6) of the Act provides that incurring or authorizing expenditure in contravention of section 77 would amount to corrupt practice.

In order to challenge the election of a returned candidate on the ground of corrupt practice as stated in section 123 (6) of the Act the basic material facts would be (i) copy of the account submitted by the candidate under section 77 of the Act, (ii) the account contained incorrect facts, figures and particulars, (iii) the facts, figures and particulars mentioned in the account did not depict the actual amount spent, (iv) the figures had been reduced in order to confine it to the maximum ceiling limit prescribed, (v) the candidate had spent the amount in excess of what was stated in the account and (vi) details of the excess expenditure made by the candidate.

The next question would be whether such excess expenditure, not reflected in the accounts, was actually made by the candidate or his election agent or upon its authorization by associated person.

The petitioner while raising ground of corrupt practice under section 123 (6) of the Act has not cared to state the essential facts which would be germane to the issue. These facts may be summarised as follows :

- (i) The date on which the respondent filed the account with the District Election Officer under section 78 of the Act.
- (ii) The petitioner does not even state that he has a copy of the account submitted by the respondent under section 78 of the Act with the District Election Officer.
- (iii) The petitioner has seen the account furnished by the respondent under section 78 of the Act with the District Election Officer.
- (iv) The averments made in paragraphs 28-33 giving figures of the expenditure relating to different heads have not been stated to be whether they existed in the account furnished by the respondent before the District Election Officer and if so all the amount was shown against those heads for which excessive expenditure is stated.
- (v) Who incurred the expenses of the figures mentioned in paragraphs 28-33 of the petition under different heads?
- (vi) Whether the said amount was spent by the candidate, his election agent or upon authorization or consent of the candidate by associated persons.
- (vii) Neither the name of the election agent has been stated nor the names of any associated person has been stated who incurred the expenditure alleged in paragraphs 28-33 of the petition.
- (viii) Time, place and manner in which the authorization was made by the candidate or his election agent to the authorized persons has also not been stated.

To make out a case for contravention of section 77 of the Act as a corrupt practice under section 123 (6) of the Act the above facts would be the basic or the minimum facts required to constitute material facts.

In the light of the above the averments contained in paragraphs 28-33 are now being dealt with in detail.

Paragraph 28 of the petition reads as follows :

*28. That the concise statement of material facts regarding ground G, H & I, it is submitted that the respondent-Returned Candidate, his election agents or the persons associated with him with his consent acted in contravention of Section 77 of the said Act have incurred and authorized the expenditure beyond the permitted limit. It is submitted that in contravention of Section 77 of the Act his corrupt practice in terms of section 123(6) of the Act. Section 77 of the Act deals with “account*

*of election expenditure and maximum thereof". It is provided in section 77(3) that total of the said expenditure shall not exceed such amount as may be prescribed by the Election Commission. For the present election the Election Commission of India has set limit of Rs.70 Lakhs as maximum expenditure which may be incurred by the candidates. Section 77 (1) further provides that the candidate himself or through his election agents keep a separate correct account of all expenditure in connection with the election expenditure incurred or authorized by him between the date on which he has been nominated and the declaration of results thereof, both dates inclusive. Meaning thereby, that the returned candidate or his election agents have to keep a correct account of all expenditure in connection with the election. But Explanation – 1 to Section 77 of the Act exempts the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating the programme of the political party. The provisions of Section 77 have been violated by the Returned Candidate. It is submitted that returned candidate has spent more than 50 crores rupees in campaigning in Varanasi Constituency.*

Paragraph 28 of the petition refers to the provision of sections 77 and 123 (6) of the Act and explains the same. It does not make any factual averments, except for the last sentence of paragraph 28 which states that the returned candidate spent more than Rs.50 crores in campaigning in Varanasi Constituency. At the cost of repetition it is again mentioned that this paragraph 28 does not make any other factual averments but for the last sentence as recorded above. It is a vague statement that the returned candidate spent more than Rs.50 crores in Varanasi Constituency. It does not give any detail or breakup as to who, on which item and for what purposes Rs.50 crores were spent and it also does not mention as to who spent this amount whether the returned candidate or his election agent or any associated person with the consent of the returned candidate or his election agent.

Paragraph 29 of the petition contains factual averments and therefore it would be appropriate to reproduce the same and thereafter deal with the facts mentioned therein :

*29. That nomination paper of the respondent-returned candidate was filed on 24.04.2014 in which hundreds of leaders of the party have come to attend the said rally. It is submitted that expenses of traveling, boarding, lodging of the said leaders are part of the election expenses of the returned candidate. The said expenses in itself shall not be lesser than 20.00 lakhs rupees, as the said leaders were accommodated in the different hotels like Hotel Ramada, Hotel Meridian, Hotel Surya, Hotel Taj, Hotel Radisson etc. where the rooms had been booked from 22.04.2014 to 10.05.2014. Sri Amit Shah stayed in Temple Town Hotel since 22.04.2014 to 24.04.2014 and accompanied the returned candidate for presenting the nomination papers. All rooms of the Hotel Surya were booked with effect from 22.04.2014 to 10.05.2014 where the press conference, media centre were set up. Similarly second floor of Hotel Meridian was also booked for the said period.*

From a reading of the above paragraph it is to be noted that according to the petitioners -

- (i) 100 of leaders of the party had come to attend the rally on 24.04.2014. Names of the leaders have not been mentioned,
- (ii) the traveling, boarding and lodging expenses on the said leaders are part of the election expenses of the returned candidate and the same would not be less than Rs.20 lakh. As such leaders were accommodated in different hotels like Hotel Ramada, Hotel Meridian, Hotel Surya, Hotel Taj, Hotel Radisson etc. where the rooms had been booked from 22.04.2014 to 10.05.2014,
- (iii) Sri Amit Shah stayed in Temple Town Hotel since 22.04.2014 to 24.04.2014 and accompanied the returned candidate for presenting the nomination paper,
- (iv) all rooms of Hotel Surya were booked with effect from 22.04.2014 to 10.05.2014 where press conference, media centre were setup and

(v) second floor of Hotel Meridian was also booked for the said purpose.

Paragraph 30 of the petition also contains factual averments which as such the same is reproduced below :

*30. That in the residential apartment namely Virat Villa (now known as Seva Ashram), Sigra Rath Yatra Road, Varanasi five floors have been booked for the period of 24.04.2014 to 10.05.2014. Every floor has 10 to 12 flats and holds approximate area of 8000 sq ft. each. Prevailing rent for the said apartment had been 45 to 50 rupees per sq. ft. per month. In the said complex one floor was utilized for IT Cell, one floor was for Media Co-ordination Cell, one floor for parties meeting, one floor of general public and top floor for VIPs. It is submitted that rent/lease charges for the said premise, hotels hired by the returned candidate, his election agent and other persons acting with his consent not less than Rs.50 lakhs.*

In brief the facts stated in this paragraph are :

- (i) In residential apartment namely Virat Villa (now known as Seva Ashram), Sigra Rath Yatra Road, Varanasi five floors were booked from 24.04.2014 to 10.05.2014, each floor has 10 to 12 flats with an approximate area of 8000 sq. ft. each.
- (ii) Prevailing rent for the said apartment was Rs.45 to Rs.50 per sq. ft. per month.
- (iii) In the said complex one floor was utilized for IT Cell, one floor for general public and top floor for VIPs.
- (iv) The rent/lease charges for the said premises, hotels hired by the returned candidate, his election agent and other persons acting with his consent was not less than Rs.50 lakhs.

Paragraph 31 of the petition also contains factual averments. The same is reproduced below :

*31. That the expenses incurred by the returned candidate on coming to the constituency for filing nomination paper, campaigning has also to be added to the expenditure incurred by the returned candidate has been visiting the constituency either by way of helicopter or by chartered plane. It is submitted that the traveling expenses incurred by the respondent-returned candidate shall not be lesser than Rs.10.00 lakh. All the expenses of the massive rally which took place on 24.04.2014 and his rally in Lahuraveer, road show etc.*

The above paragraph spells out the following facts :

- (i) the expenditures incurred by the returned candidate in coming to his constituency to file nomination paper and in campaigning are also be added to the expenditure incurred by the returned candidate as he as visiting the constituency either by way of helicopter or by chartered plane and such traveling expenditure would not be less than Rs.10 lakh.
- (ii) The last sentence of this paragraph reads that all the expenses of the massive rally which took place on 24.04.2014 and his rally in Lahuraveer, road show etc. is an incomplete sentence. It is difficult to understand how the last sentence of this paragraph would be attributable to the returned candidate or his election agent or associated persons.

Paragraph 32 of the petition also contains factual averments as such is being reproduced below :

*32. That 400 mobile vane installed with LCD T.V. were hired for election campaigning in the constituency which were converted into Har-Har Van bearing slogan HAR-HAR MODI and GHAR-GHAR MODI RATH YATRA. The said vans have traveled repeatedly to all parts of the constituency*

*to campaign for the returned candidate. These all things have been reported in the daily newspapers on 24.03.2014 and 25.03.2014. The expenses of Mobile vans, diesel, drivers and other staffs have also to be included in the election expenses of the returned candidate which shall not be lesser than Rs.50.00 Lakhs. The advertisement and coverage made by the electronic media has been recorded in a C.D. which may form integral part of pleading and herewith appended as SCHEDULE-III to the election petition.*

Facts stated in this paragraph may be reproduced as under :

- (i) 400 mobile vans installed with LCD TV were hired for election campaigning in the constituency which were converted into Har-Har Van bearing slogan HAR-HAR MODI and GHAR-

**GHAR MODI RATH YATRA.**

- (ii) Said vans have traveled repeatedly to all parts of the constituency to campaign for the returned candidate as reported in daily newspapers on 24.03.2014 and 25.03.2014.
- (iii) The expenses of Mobile vans, diesel, drivers and other staffs have also to be included in the election expenses of the returned candidate which shall not be less than Rs.50 lakhs.
- (iv) The advertisement and coverage made by the electronic media has been recorded in a C.D. which may form integral part of pleading and is attached as Schedule-III.

Paragraph 33 of the petition also contains some factual averments as such are being reproduced below :

*33. That about 450 rallies of the returned candidate have taken place all over India which have been widely covered and circulated by media in various forums. News items in regard to the said rallies have been published in print and electronic media including Varanasi constituency. Repeated advertisement representing the returned candidate with remark "ABKI BAR MODI SARKAR" have been published in the print media and electronic media and has been widely circulated all over India including Varanasi constituency where it has been seen by the voters on the media forums. The campaigning of the returned candidate by way of said advertisement, rallies have been for himself as a Prime-ministerial candidate and not to propagate the programme for the B.J.P. which is projected in its manifesto. It is submitted that though the returned candidate has no constitutional mandate to project him as Prime-ministerial candidate, it is submitted that the expenses for rallies, advertisements are to be considered as part of his election expenditure. The respondent-returned candidate has spent much beyond the prescribed expenditure of Rs.70 lakhs. The entire campaign of the B.J.P. has been around the returned candidate to promote his candidature in Varanasi Constituency from there he was contesting the election. The returned candidate was not only the face but also the centre point of the entire campaigning of the B.J.P. There have been estimated circulated in the media estimating the advertisement expenditure of the party for the campaign to be around Rs.5,000 crores before the last phage of polling. It is submitted that the said expenditure is to be divided between all the candidates of the party and the share of the returned candidate shall itself be more than the prescribed limit. The returned candidate has conducted around 1500 3D rallies at considerable expend. The company namely NCHANT 3D have provided hardware/software for 3D rallies. The cost of which per rally shall not be lesser than Rs.50 Million excluding the cost of renting small trucks for a month shall be not less than Rs.36,000.00 per trucks besides the power supply costs.*

Facts quoted in this paragraph 33 may be summarised as follows :

- (i) 450 rallies of the returned candidate have taken place all over India which have been widely covered and circulated by media in various forms.
- (ii) News items in regard to the said rallies have been published in print and electronic media including Varanasi constituency.
- (iii) Repeated advertisements representing the returned candidate with remark “ABKI BAR MODI SARKAR”
- (iv) The returned candidate by way of said advertisements, rallies had been campaigning himself as a Prime Ministerial Candidate and not to propagate the programme for the BJP which is projected in its manifesto.
- (v) As the returned candidate has no constitutional mandate to project him as Prime Ministerial candidate, the expenses for rallies and advertisements are to be considered as part of his election expenditure.
- (vi) The returned candidate spent much beyond the prescribed expenditure of Rs.70 lakh.
- (vii) The entire campaigning of the BJP has been around the returned candidate to promote his candidature in Varanasi Constituency from there he was contesting the election.
- (viii) The returned candidate was not only the face but also the centre point of the entire campaigning of the BJP.
- (ix) There have been estimate circulated in the media estimating the advertisement expenditure of the part for the campaign to be around Rs.5,000 crores before the last phase of polling. Such expenditure should be divided between all the candidates of the parties and as such share of the returned candidate itself would be more than the prescribed limit.
- (x) The returned candidate has conducted around 1500 3D rallies at considerable expense. The company namely NCHANT 3D have provided hardware/software for 3D rallies and cost of each rally should not be lesser than Rs.50 Million excluding the cost of renting small trucks for a month which shall also not be less than Rs.36,000 per truck besides the power supply costs.

### **DISCUSSION – Grounds G, H & I**

On the basis of the above narration of facts the petitioners seek to challenge the election of the respondent-returned candidate on the ground of corrupt practices as provided under section 123 (6) of the Act.

Sri Jain, learned Senior Counsel representing the respondent submitted that the facts stated in paragraphs 28-33 do not constitute a cause of action as they lack with complete material facts which may be tried in the election petition. The petitioners have made vague and bald statement without giving relevant material facts with regard to each of the allegations and in view of the settled law no cause of action arises in this petition which may compel the Court to put the petition to trial.

Sri Jain has placed strong reliance on the case of *Azhar Hussain* (supra) wherein the Apex Court has dealt with in detail and has laid down as to what would constitute the material facts to constitute a complete cause of action. It would be worthwhile to refer to paragraph 18 of the

judgment of the Apex Court in the case of *Daulat Ram Chauhan vs. Anand Sharma*, reported in AIR 1984 Supreme Court 621 wherein the Apex Court again emphasised that in order to constitute a corrupt practice necessary particulars, statement of facts and essential ingredients must be contained in the pleadings in the following words.

18. *We must remember that in order to constitute corrupt practice, which entails not only the dismissal of the election petition but also other serious consequences like disbarring the candidate concerned from contesting future election for a period of six years, the allegations must be very strongly and narrowly construed to the very spirit and letter of the law. In other words, in order to constitute corrupt practices the following necessary particulars, statement of facts and essential ingredients must be contained in the pleadings:-*

- (1) *Direct and detailed nature of corrupt practice as defined in the Act.*
- (2) *Details of every important particular must be stated giving the time place, names of persons, use of words and expressions, etc.*
- (3) *It must clearly appear from the allegations that the corrupt practices alleged were indulged in by (a) the candidate himself (b) his authorised election agent or any other person with his express or implied consent.*

Further a reference may also be made to the judgment of the Apex Court in the case of *Kamal Nath v s. Sudesh Verma*, reported in (2002) 2 Supreme Court Cases 410. In paragraph 4 of the said report the Supreme Court observed that “.... It may be stated that mere non-disclosure of the expenditure will not be a corrupt practice but it is incurring of expenditure in excess of the prescribed amount would be held to be a corrupt practice. On a combined reading of Section 77 and Section 123 (6) of the Act, it is explicitly clear that the excess expenditure must be incurred by the candidate or by any person authorised by the candidate or his election agent. In other words, an expenditure incurred by a third person, who is not authorised by a candidate or who is not an election agent of the candidate, will not be a corrupt practice within the ambit of Section 123 (6) of the Act to plead requisite facts showing authorisation or undertaking of reimbursement by the candidate or his election agent.....”

Reverting back to the pleadings in the election petition it is to be seen whether each of the averments contained are completely clothed with all material facts so as to constitute a cause of action.

Paragraph 28 of the petition as already stated above, except for the last sentence that the returned candidate spent more than Rs.50 crores in campaigning in Varanasi Constituency, does not state any other fact relating to the corrupt practice but rather lays down legal and statutory provisions and the requirement thereof. Last sentence is completely vague and as such cannot in any manner be said to be disclosure of material facts.

In Paragraph 29 each of the parts as already incorporated above are not supported by complete material facts. The first sentence of Paragraph 29 is again vague. It just refers to 100 of leaders to attend the rally on 24.04.2014 the date on which nomination papers were filed. No more details are given, not even a single name of the party leader is mentioned. The averment that the expenses relating to the said leaders on their traveling, boarding, lodging etc are to be treated as election expenditure of the returned candidate, is also without specific averments relating to as to who made expenditure, what was the amount of expenditure, how the leaders traveled and by which mode, are not mentioned. Vaguely, it has been mentioned, that not less than Rs.20 lakhs have been spent. Names of several hotels have been given like Hotel Ramada, Hotel Meridian, Hotel Surya,

Hotel Taj, Hotel Radisson etc. but petitioners have not cared to mention about the rent/tariff of the hotel rooms. Who made the payment thereof has also not been pleaded. It is next stated that Sri Amit Shah stayed in Temple Town Hotel. No details regarding the amount or the person making payment has been made. Similarly with regard to Hotel Surya being booked, no specific facts have been mentioned as to what was the amount and who paid the same.

In Paragraph 30 residential apartment and 5 floors of Virat Villa (now known as Seva Ashram), Sigra Rath Yatra Road, Varanasi are said to have been booked for the period from 24.04.2014 to 10.05.2014, but again, no details with regard to amount paid and who paid the amount has been mentioned. It is said that different floors were used for different purpose namely IT Cell, Media Coordination Cell, parties meeting, general public and VIPs. In the end it is only mentioned that the total amount of Rs.50 lakhs must have been spent by the returned candidate, his election agents and other persons with their consent. Now who made the payment, what and how consent was taken, whether the election agents made payment or the returned candidate made the payment have not been pleaded.

Similarly in Paragraph 31 also the averments contained are vague. It relates to the traveling expenses of the returned candidate on visiting his constituency either by helicopter or chartered plane and it has again been mentioned that such expenditure would not be less than Rs.10 lakhs. This paragraph again is lacking in basic material facts. The averments are wholly vague.

In Paragraph 32 reference of 400 mobile vans installed with LCD TV hired for election campaign are said to have been used with slogan “HAR-HAR MODI and GHAR-GHAR MODI RATH YATRA”. Again there is lack of specific pleadings with regard to the amount paid and who paid the amount and where these amounts were paid by the associated persons or election agents or by the returned candidate after obtaining consent of the returned candidate or the election agents. All such averments are missing. Again a vague figure of Rs.50 lakhs has been mentioned to have been spent. A CD has been annexed as Schedule-III mentioned in Paragraph 32. The sentence reads that the advertisement and coverage made by the electronic media has been recorded in that CD which may form integral part of pleading. The contents of the CD have not been transcribed nor placed on record. Sri Sharma, learned Senior Counsel wanted the Court to take the said CD as part of the pleading which the Court is afraid can be done. CD could be read in evidence in support of or to substantiate or prove certain facts and pleadings but in the absence of the contents of the CD being stated and to prove the fact which may have been pleaded being missing, it would be difficult to accept the submission of Sri Sharma.

Paragraph 33 talks about 450 rallies which took place all over India by itself, cannot in any manner be a part of corrupt practice as defined in Section 123 (6) of the Act. The averments made in Paragraph 33 are with regard to the returned candidate projecting himself as Prime Ministerial Candidate. This projection of the returned candidate as a Prime Ministerial Candidate cannot be said to be a corrupt practice under section 123 (6) of the Act. The Act does not provide such projection as a corrupt practice. Further there is a vague averment that the returned candidate spent beyond the prescribed expenditure limit of Rs.70 lakhs but it may be noted here that the petitioners have not pleaded anywhere as to the contents of the statement of account as submitted under section 78 of the Act. The next statement is that in the media it was circulated that an estimated amount of expenditure of the party in campaign was Rs.5000 crores before the last phase of polling. This again by itself cannot constitute a cause of action or an issue which can be tried. The next submission that such expenditure of Rs.5000 crores as circulated by media should be divided between all the candidates of the parties as such share of the candidates is more than prescribed limit is again a vague and bald statement. With regard to 1500 3D rallies said to have been conducted by the returned candidate at considerable expense and each rally costing not less than Rs.50 Million is again completely vague as the basic and material facts are lacking.

Section 77 of the Act requires the candidate at an election to keep a separate account of all expenditure in connection with an election incurred or authorized by him or by his election agent and such account is to be filed under section 78 of the Act within 30 days. Section 123 (6) of the Act makes the incurring or authorizing of expenditure in contravention of section 77. of the Act a corrupt practice. In order to constitute a corrupt practice under section 123 (6) of the Act, the incurring of the expenditure or authorizing of the expenditure in excess of the statement of account filed under section 78 has to be proved. For the various expenditures mentioned in Paragraph 28 to 33 firstly the fact as to who made the expenditure is missing and secondly the very averment that the expenditure was made by the candidate, his election agent or with the consent of the returned candidate or his elections agent is also lacking. It is only at one or two places it has been mentioned that the expenses were made by the returned candidate, his election agents or other persons acting with his consent. In order to substantiate this averment, specific facts relating to the person making the expenditure, the amount of expenditure are to be pleaded to make out a case which can be tried. On such a vague allegations no issue can be made triable.

It may be true that the expenditure incurred in the election of the returned candidate may be in excess of ceiling limit fixed by the Election Commission of India but for that in the absence of specific details or at least making such pleadings with specific details which may convince the Court that at least a triable issue has been raised, it would be difficult to put this petition to trial. The petitioners, it appears, half-heartedly filed this petition. May be in over confidence they thought that such frivolous allegations in each paragraph would make out a triable issue but since Election Law is extremely technical and is governed by the statute, parties have to strictly adhere to the provision of the Act and Rules and thus the Court finds that no fruitful purpose would be served by putting this petition to trial. No cause of action arises on any of the issues raised and pressed in this petition.

Preliminary objection raised by the respondent is upheld.

Application Paper No.A-10 is allowed. Application Paper No. A-11 is dismissed as not pressed.

As a consequence the election petition is liable to be dismissed at the threshold and is accordingly dismissed.

There shall however be no order as to costs.

Order Date : 7.12.2016

sd/-  
VIKRAM NATH, J.  
[No. 82/UP-HP/9/2014(Alld.)]

BY Order,  
ANUJ JAIPURIAR. Secy.